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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,492	09/25/2000	Thierry Ifergan	64875	3091

7590                    04/11/2002

DOWELL & DOWELL, P.C.  
SUITE 309  
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ARLINGTON, VA 22202-3124

[REDACTED] EXAMINER

MAI, HUY KIM

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

2873

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/669,492	IFERGAN ET AL.
	Examiner Huy K. Mai	Art Unit 2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 January 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,4,6-8 and 10-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4 and 6-8 is/are allowed.
- 6) Claim(s) 1,3 and 10-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on Jan. 18, 2002 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 10,13,16-20,22 are rejected under 35 U.S.C. 102(a, e) as being clearly anticipated by Ku (5,975,691) or Cate (6,164,774).

The limitations in claims in claims 10,13,16-20,22 are shown in Ku's Figs. 3-5 or Cate's Figs. 1-5.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ku (5,975,691) or Cate (6,164,774) in view of Masunaga (5,431,506).

Ku and Cate disclose the claimed invention, but do not disclose the bridge of the primary eyeglass frame made of a flexible shape memory alloy. In the same field of endeavor, Masunaga discloses the bridge of the eyeglass frame being made of a flexible shape memory alloy for the purposes of as a flexible shape memory bridge. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the eyeglass frame of Masunaga as a primary eyeglass frame in the Ku or Cate's eyeglass device for the purpose of the bridge of the eyeglass frame being flexible shape memory as disclosed by Masunaga .

5. Claims 11,12,15,21,23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ku or Cate in view of Masunaga.

Ku and Cate disclose the claimed invention, but do not disclose the bridge of the primary eyeglass frame made of a flexible shape memory alloy. In the same field of endeavor, Masunaga discloses the bridge of the eyeglass frame being made of a flexible shape memory alloy for the purposes of as a flexible shape memory bridge. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the eyeglass frame of Masunaga as a primary eyeglass frame in the Ku or Cate's eyeglass device for the purpose of the bridge of the eyeglass frame being flexible shape memory as disclosed by Masunaga .

6. Claims 10-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zelman (6,139,142 in view of Masunaga.

Zelman discloses the claimed invention, but does not disclose the bridge of the primary eyeglass frame made of a flexible shape memory alloy. In the same field of endeavor, Masunaga discloses

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the bridge of the eyeglass frame being made of a flexible shape memory alloy for the purposes of as a flexible shape memory bridge. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the eyeglass frame of Masunaga as a primary eyeglass frame in the Zelman's eyeglass device for the purpose of the bridge of the eyeglass frame being flexible shape memory as disclosed by Masunaga.

***Allowable Subject Matter***

7. Claims 4,6-8 are allowed.

8. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy K. Mai whose telephone number is (703) 308-4874. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (703) 308-4883. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Huy Mai  
Primary Examiner

HKM/  
April 8, 2002